HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO.755 OF 2007

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Between:
Yelamanchali Eswara Rao.

.....Appellant

AND

M/s. Sree Raja Rajeswari Paper Mills Limited,
Represented by its Director VC Janardan Rao,
Bopulapadu, Krishna District and another.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri M.Pitchaiah

Counsel for the Respondent No.2 : Sri V.Hariharan

Dated 17.9.2007

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 9.8.2007 passed by the learned Single Judge in W.V.M.P.No.1688 of 2007 in W.P.M.P.No.19853 of 2007 in W.P.No. 7981 of 2004 whereby he declined to vacate interim order dated 27.4.2004 passed in W.P.M.P.No.10397 of 2004.

The appellant, who was employed in the services of respondent No.1 M/s. Sree Raja Rajeswari Paper Mills Limited was dismissed from service on being found guilty of the mis-conduct allegedly committed by him. The industrial dispute raised by him, was registered as I.D.No.147 of 1994. By an award dated 29.11.2001, Presiding Officer, Labour Court, Guntur directed reinstatement of the appellant with back wages and other benefits.

Respondent No.1 challenged the award in Writ Petition No.7981 of 2004. While admitting the writ petition on 27.4.2004, the learned Single Judge passed an interim order in W.P.M.P.No. 10397 of 2004 and stayed implementation of the award albeit without requiring the petitioner to comply with Section 17-B of the Industrial Disputes Act, 1947 (for short 'the Act'), which reads as under:

> **Section 17-B** Payment of Full wages to workman pending proceedings in higher Courts:- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer

shall be liable to pay such workman, during he period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that, where it is proved to the satisfaction of the High Court, or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be.

The appellant filed W.V.M.P.No.1790 of 2004, which was disposed of by the learned Single Judge on 10.8.2004 in the following terms.

" The Second respondent in the Writ Petition filed this application to vacate the interim stay order granted by this Court on 27.4.2004.

This Court by the aforesaid order granted interim stay of operation of the award dated 29.11.2001 passed in I.D.No.147 of 1994 on the file of the first respondent.

On the Industrial dispute raised by the second respondent, the Labour Court, Guntur passed the aforesaid order dated 29.11.2001 in I.D.No.147 of 1994 by setting aside the dismissal order dated 12.1.1994, declaring that the petitioner is entitled to be reinstated into service with continuity of service and with full back wages.

Whenever the award of the Labour Court is challenged, the workmen are entitled for payment of wages under Section 17(b) of the Industrial Disputes Act.

Having regard to the facts and circumstances of the case, the interim stay granted by this Court on 27.4.2004 is made absolute, subject to the condition of the Writ Petitioner paying the wages payable to the

second respondent in the Writ Petition under Section 17(b) of the Industrial Disputes Act."

Respondent No.1 challenged the aforementioned order of the learned Single Judge in Writ Appeal No.2050 of 2004 and pleaded financial difficulty and closure of the industry as the causes for its inability to pay last drawn wages to the workman. The Division Bench did not feel impressed and dismissed the appeal with liberty to the parties to raise all available legal pleas before an appropriate forum. The relevant portions of the order passed by the Division Bench read as under:-

> "While admitting the writ petition, by an interim order dated 27-04-2004, the learned single Judge of this Court granted stay of operation of the abovementioned award. Subsequently, the 2nd respondent filed an application in W.V.M.P.No.1790 of 2004 for vacating the said interim stay. On consideration of the vacate petition and having regard to the facts and circumstances of the case, the present order under appeal came to be passed by the learned single Judge, by which he made the interim order dated 27-04-2004 absolute, subject to the condition that the appellant herein pays wages to the 2nd respondent in accordance with Section 17-B of the Industrial Disputes Act. Aggrieved by the same, the present appeal is filed.
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> The learned counsel for the appellant submitted that the industry run by the appellant company is not financially sound and, therefore, it is temporarily closed. The other workmen of the appellant company are also not being paid their wages and therefore, the implementation of the interim order of this Court complying with the provisions of Section 17-B of the Industrial Disputes Act in respect of 2nd respondent, would create a separate category of workmen.
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> We express our inability to accept the submission made by the learned counsel for the appellant. The Industrial Disputes Act does not recognise the '*temporary closure*' of an industry. The expression '*closure*' is defined in Section 2 (cc) of the Act, which reads as follows:
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> " [(cc) "closure" means the permanent closing down

of a place of employment or part thereof;]"

What Section 2(cc) of the Industrial Disputes Act contemplates is only a 'permanent closure' and 'temporary closure' is neither contemplated nor recognized under the Act. Further, the consequences arising out of a '*permanent closure*' of an industry would result in the rights and obligations, which are prescribed under the Act, but the consequences of a '*temporary closure*' are not provided under the Act.

In the instant case, as a matter of fact, the industry is temporarily closed, but the legality and consequences of such temporary closure is a matter for adjudication by an appropriate authority and not a matter for decision by this Court, that too at the interlocutory stage.

It is submitted by the learned counsel for the appellant that the case of the 2nd respondent for payment of wages under Section 17-B of the Act, would be considered along with other similarly placed persons, in accordance with law.

Having regard to the facts and circumstances, we are of the view that it is not for this Court to adjudicate upon the present issue. We do not find any reason to interfere with the order under appeal. It is open to the learned counsel for the appellant as well as the 2nd respondent to raise such legal pleas in an appropriate forum, if they are so advised.

The appeal is therefore, dismissed at the stage of admission."

The dismissal of the writ appeal filed by it against the modified interim order passed by the learned Single Judge must have given a clear signal to respondent No.1 pay wages to the workman (the appellant herein) in terms of Section 17-B of the Act, but it did not pay even a single penny to him, what to say of wages from the date of award in terms of Section 17-B of the Act. The workman filed Contempt Case No.1154 of 2006. The same was dismissed with an observation that he is free to take appropriate steps to approach the labor court for recovery of wages. He then filed WVMP No.1688 of 2007 for vacating the interim order dated 27.4.2004. He also filed

W.P.M.P.No.19853 of 2007 for issue of a direction to respondent No.1 to pay current wages every month. By the order under challenge, the learned Single Judge relegated the appellant to remedy under Section 33-C of the Act by observing that as a result of failure of writ petitioner to comply with Section 17-B of the Act, he has become entitled to receive the arrears of wages.

We have heard learned counsel for the parties and scrutinized the record. Since the main petition is pending adjudication before the learned Single Judge, we do not consider it proper to express any opinion on the merits of the case set up by respondent No.1 but we have no hesitation to hold that the learned Single Judge committed serious error by relegating the appellant to the remedy of filing an application under Section 33-C of the Act.

Since the modified interim order passed by the learned Single Judge was conditional, respondent No.1 could continue to enjoy the benefit of the order subject to the fulfillment of its obligation in terms of Section 17-B of the Act. However, the fact of the matter is that respondent No.1 did not comply with the condition incorporated in the modified interim order. Therefore, there can be no justification to continue the interim order and compel the workman (the appellant herein) to seek implementation of order passed by this Court by filing an application under Section 33-C of the Act. We cannot countenance a situation in which a party succeeds in persuading the court to pass a conditional interim order and fails to comply with the condition and yet enjoy the benefit of the interim order.

Sri V.Hariharan tried to persuade us not to interfere with the order under challenge by stating that the unit of respondent No.1 is closed, but we are not inclined to act on this submission because similar plea

raised by respondent No.1 was turned down by the coordinate Bench while dismissing Writ Appeal No.2050 of 2004.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, W.V.M.P.No.1688 of 2007 is also allowed and interim order dated 27.4.2004, wich was modified on 10.8.2007 is vacated.

As a sequel to disposal of the appeal in the manner indicated above, W.A.M.P.Nos.1511 and 1512 of 2007 filed by the appellant for interim relief and direction are dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

Dt.17.9.07.
msv